

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Jul 18, 2018

SEAN F. McAVOY, CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARCELLO SANTOS-MESA,

Defendant.

No. 1:18-CR-2027-SMJ

ORDER GRANTING  
DEFENDANT'S MOTION TO  
REVIEW FURLOUGH ORDER AND  
SETTING CONDITIONS OF  
RELEASE

U.S. MARSHALS ACTION  
REQUIRED

On July 18, 2018, the Court held a hearing on Defendant Marcello Santos-Mesa's Motion for Reconsideration of the Detention Review Hearing, ECF No. 32. The Court granted the motion at the conclusion of the hearing and imposed conditions for Defendant's furlough release. This order memorializes and supplements the Court's oral ruling.

**I. RELEVANT FACTS AND PROCEDURAL HISTORY**

**A. Factual Background**

Defendant was indicted on April 10, 2018, for Conspiracy to Distribute 50 Grams or More of Actual (Pure) Methamphetamine in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A)(vii), 846. ECF No. 16. The United States Attorney's Office

**ORDER GRANTING DEFENDANT'S MOTION TO REVOKE  
DETENTION ORDER AND SETTING CONDITIONS OF RELEASE - 1**

1 (USAO) moved for pretrial detention, and Defendant waived his right to a detention  
2 hearing. Accordingly, Magistrate Judge Dimke granted the USAO's motion for  
3 detention, and Defendant has been in custody at the Yakima County Jail pending  
4 trial on the aforementioned charges. At the time of this order, Defendant was in  
5 custody at the Benton County Jail.

6 Defendant is 43 years old and was born in Washington state. Defendant has a  
7 lengthy criminal record of minor offenses including several charges for possession  
8 of a controlled substance and driving without a license. Defendant also has numerous  
9 failures to appear or comply with terms of probation. Most notably, Defendant was  
10 convicted of possession of a controlled substance in 2014 and began a term of  
11 supervision on February 2, 2016. Since then, Defendant has had six violation  
12 processes and twelve infractions.

13 On July 11, 2018, Defendant's brother passed away unexpectedly. The family  
14 will be holding a viewing on Wednesday July 18, 2018, from 4:00 p.m. to 8:00 p.m.,  
15 and the funeral service will occur the next day on Thursday July 19, 2018 at 11:00  
16 a.m. at the Abundant Life Church in Yakima. Defense counsel represents that  
17 Defendant has a large family in Yakima and that one of Defendant's family members  
18 is prepared to pick him up at the Yakima County Jail before the viewing, return him  
19 to the jail following the viewing, and then pick him up for the funeral the next  
20 morning and return him to the jail after the funeral.

1 Defense counsel represents that she has spoken with AUSA Ben Seal and that  
2 he has no objection as long as the defendant has an armed police escort that is paid  
3 at his own expense. ECF No. 29 at 3.

4 Defendant moved for furlough release, and Magistrate Judge Dimke heard  
5 Defendant's motion July 17, 2018. Magistrate Judge Dimke granted the motion in  
6 part with the following conditions:

7 Defendant may be temporarily released if he arranges and pays for 2  
8 off-duty police officers to escort him for a private viewing with his  
9 deceased brother. No other family members may be present or aware  
10 of when it will be. Defense counsel may coordinate with the U. S.  
11 Marshal's to make those arrangements. Once notified of the  
12 proposed plan, the Court will issue an order.

13 ECF No. 31 at 1.

14 Defendant sought review of Magistrate Judge Dimke's order from this  
15 Court. ECF No. 32. Because of the compressed timeline in this case, the  
16 Court heard the motion on an expedited basis.

### 17 **APPLICABLE LEGAL STANDARD**

18 The Bail Reform Act provides for review by the court with original  
19 jurisdiction of a detention order by a magistrate judge. 18 U.S.C. § 3145(b). A  
20 district court reviewing a magistrate judge's order concerning detention does so *de*  
*novo*, without deference to the magistrate judge's factual findings. *See United States*  
*v. Koenig*, 912 F.2d 1190 (9th Cir. 1990). However, the "court is not required to start  
over in every case, and proceed as if the magistrate's decision and findings did not

1 exist.” *Id.* at 1193. The district court must, however, reach its own independent  
2 determination. *Id.* Accordingly, this Court conducts its own inquiry.

## 3 II. ANALYSIS

4 A pretrial detainee does not have a constitutional right to be released from  
5 incarceration to attend a family member’s funeral. *See Higgenbottom v. Racine*  
6 *Cty. Sheriff Dept.*, No. 13-cv-1333-JPS, 2015 WL 5512952, at \*5 (Sept. 17, 2015  
7 E.D. Wisc.) (collecting cases). Accordingly, the Court must analyze a motion for  
8 funeral furlough as it would any other motion for pretrial release. *See id.*

9 Under the Bail Reform Act, defendants awaiting trial may be released on  
10 personal recognizance or bond, conditionally released, or detained. *See* 18 U.S.C.  
11 § 3142(a). When determining whether to order continued detention, the Court  
12 conducts a two-step inquiry. First, the Court determines whether the defendant  
13 presents a “serious risk that such person will flee” or that the person “will  
14 endanger the safety of any other person or the community” if not detained. *United*  
15 *States v. Gentry*, 455 F. Supp. 2d 1018, 1020 (D. Ariz. 2006) (quoting 18 U.S.C.  
16 § 3142(f)(2)(A)). Second, if the Court finds the defendant poses a risk of flight or  
17 a threat to the safety of any other person or the community, it must then determine  
18 whether any set of conditions could “reasonably assure” the defendant’s  
19 appearance and/or the safety of the community. *Id.*

1 Here, Defendant does not dispute that pretrial detention is appropriate in this  
2 case. Instead, Defendant challenges only Magistrate Judge Dimke's findings that  
3 the conditions of furlough release are necessary and appropriate to reasonably  
4 assure Defendant's appearance and the safety of the community during his brief  
5 period of release. Accordingly, the Court focuses its analysis on the conditions of  
6 release.

7 Magistrate Judge Dimke held that conditions of release existed that could  
8 guarantee Defendant's appearance and the safety of the community for this brief  
9 furlough period. Specifically, Magistrate Judge Dimke held that Defendant may  
10 arrange for a private viewing of his brother's body so long as no other family  
11 members are present or aware of the viewing and Defendant is accompanied by two  
12 armed, off-duty officers, paid at his own expense.

13 The conditions imposed by Magistrate Judge Dimke are not unreasonable  
14 and are consistent with—though more restrictive than—the recommendation of the  
15 AUSA. That said, Defendant's accompaniment by two armed officers to the  
16 scheduled viewing and funeral would also reasonably ensure his compliance and  
17 the safety of the community. Defendant is not charged with a violent crime and it is  
18 not clear to the Court why he must be segregated from his family for this short  
19 period of time. The Court therefore finds that it would also be sufficient to grant  
20 Defendant's request to attend the viewing from 4:00 p.m. to 8:00 p.m. and to attend

1 the funeral the following day from 11:00 a.m. to 4:00 p.m. if accompanied by two  
2 armed guards paid at Defendant's expense.

3 Accordingly, **IT IS HEREBY ORDERED:**

4 **1.** Defendant's Motion for Reconsideration of the Detention Review  
5 Hearing, **ECF No. 32**, and related motion to expedite, **ECF No. 33**,  
6 are **GRANTED**.

7 **A.** Defendant may attend the viewing on July 18, 2018, from 4:00  
8 p.m. to 8:00 p.m. The viewing will be held at Kieth & Kieth  
9 Funeral Home, 902 West Yakima Avenue, Yakima, Washington  
10 98902.

11 **B.** Defendant may also attend the funeral service and reception on  
12 July 19, 2018, from 11:00 a.m. to 3:00 p.m. The funeral and  
13 reception will be held at Abundant Life Church, 1014 Fair  
14 Avenue, Yakima, Washington 98109.

15 **C.** If Defendant arranges for a private viewing, separate from his  
16 family, Defendant must be escorted, at all times, by two  
17 privately-retained law enforcement officers. If Defendant  
18 arranges to attend the viewing and funeral services in the  
19 presence of his family, Defendant must be accompanied, at all  
20 times, by three privately-retained law enforcement officers.

1 Defendant shall bear all costs for the private law enforcement  
2 escort.

3 *D.* If Defendant is able to make arrangements to attend the  
4 bereavement ceremonies, Defendant must be transported to and  
5 from the events by the United States Marshals Service unless  
6 the privately-retained law enforcement officers assume that  
7 function.

8 **2.** While on furlough release, Defendant is further subject to the  
9 following standard conditions of pretrial release:

10 *A.* Defendant shall not possess a firearm—including inoperable  
11 firearms—or any other destructive devices or dangerous  
12 weapons.

13 *B.* Defendant is further advised, pursuant to 18 U.S.C. § 922(n), it  
14 is unlawful for any person who is under indictment for a crime  
15 punishable by imprisonment for a term exceeding one year, to  
16 possess, ship or transport in interstate or foreign commerce any  
17 firearm or ammunition or receive any firearm or ammunition  
18 which has been shipped or transported in interstate or foreign  
19 commerce.  
20


1           C. Defendant shall not commit any offense in violation of federal,  
2           state, or local law.

3           D. Defendant shall refrain from use or unlawful possession of a  
4           narcotic drug or other controlled substances defined in 21  
5           U.S.C. § 802, unless prescribed by a licensed medical  
6           practitioner in conformance with federal law. Defendant may  
7           not use or possess marijuana, regardless of whether Defendant  
8           has been authorized medical marijuana under state law.

9           3. The officials at the jail where Defendant is currently housed must make  
10           Defendant available to the United States Marshals Service for transport  
11           consistent with this Order.

12           **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and  
13           provide copies to all counsel, the U.S. Marshals Service, and the U.S. Probation  
14           Office in Yakima.

15           **DATED** this 18th day of July 2018.

16             
17           \_\_\_\_\_  
18           SALVADOR MENDOZA, JR.  
19           United States District Judge  
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